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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,
13
14 Plaintiff,

15 v.

16 JAIME HERRERA,
17 Defendant.

Case No. 1:22-CR-02037-MKD

GOVERNMENT'S SENTENCING
MEMORANDUM

18 Plaintiff, United States of America, by and through Vanessa R. Waldref, United
19 States Attorney for the Eastern District of Washington, and Earl A. Hicks and Michael
20 J. Ellis, Assistant United States Attorneys for the Eastern District of Washington,
21 submits the following sentencing memorandum.

22 **I. BACKGROUND**

23 The Government agrees with the Offense Conduct summary outlined in
24 paragraphs ten through twenty-four of the draft Presentence Investigation Report. *See*
25 ECF No. 67 at ¶¶ 10–24. The Defendant – while driving late at night in Toppenish,
26 Washington, within the external boundaries of the Yakama Nation Indian Reservation
27 – stopped his vehicle by both W.G.O. and C.E. The Defendant asked W.G.O. and C.E.
28 questions indicative of probing the two men's gang membership. The Defendant then
drove away, turned his vehicle around, and again stopped in front of W.G.O. and C.E.

1 The Defendant pulled out a rifle and shot W.G.O. in the chest; W.G.O. died where he
2 fell on the sidewalk outside an elementary school.

3 The initial evidence available to the Federal Bureau of Investigation was
4 limited: a vague description of the shooter from C.E. and video surveillance footage
5 from the school. The FBI diligently investigated W.G.O.'s homicide, interviewing
6 witnesses, identifying the shooter's vehicle's make and model, and obtaining phone
7 records. The Defendant was ultimately identified as the shooter; the Defendant – a
8 Sureno gang member – would have been motivated to ask the gang membership-
9 related questions that the shooter asked W.G.O. and C.E. prior to shooting W.G.O.

10 Additionally, the Defendant – one week before the shooting – sent the
11 following Facebook message to another user: “I know efe they aint shit tho homie
12 They know wassup when I pull out my baby.” The Defendant's message was followed
13 by the below photograph:



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27 The Defendant identified the firearm as an AR-15, which can be configured to fire the
28 caliber of ammunition recovered near W.G.O. The Defendant's vehicle was searched

1 and found to have similar upholstery to the depicted seat. In short, the Defendant was
 2 forecasting his behavior – that he intended to “pull out [his] baby” – a rifle – and let
 3 someone know “wassup.” W.G.O. tragically became the individual randomly selected
 4 by the Defendant.

5 While the investigation into W.G.O.’s murder was ongoing, the Defendant
 6 committed a second, unrelated homicide – arranging an ambush and ultimately
 7 shooting the victim. The Defendant was arrested shortly after the second murder,
 8 pleaded guilty, and sentenced to 240 months imprisonment.

9 The Defendant accordingly appears for sentencing having separately murdered
 10 two men in the Yakima Valley between 2017 and 2019.

11 **II. SENTENCING CALCULATIONS**

12 **A. Base Offense Level & Enhancements**

13 The Government agrees that the Defendant’s guideline sentencing range is 360
 14 months to life.

15 **B. Departures**

16 The Government is not seeking an upward departure. Further, a downward
 17 departure is not appropriate for the reasons discussed below.

18 **III. SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)**

19 In determining the appropriate sentence, this Court should consider the factors
 20 as set forth in 18 U.S.C. § 3553(a).

21 **A. The nature and circumstances of the offense and the history and** 22 **characteristics of the Defendant**

23 Based on the totality of the circumstances, the nature and characteristics of the
 24 Defendant’s conduct warrant a sentence of 360 months imprisonment consecutive to
 25 the Defendant’s 240-month sentence following the 2019 murder. The Defendant has
 26 committed multiple murders, ruining numerous lives in the Yakima Valley. W.G.O.
 27 was a son, a brother, and a new father – his daughter, a toddler at the time of his death,
 28 is growing up without a father because of the Defendant’s random selection of

1 W.G.O. as a target. The Defendant – in his “social history report” – attempts to
2 portray himself and his actions as a result of his upbringing. No one forced the
3 Defendant to kill; the Defendant made his own terrible choices. As noted by the
4 Defendant, he had an opportunity to get away and change his life while living in
5 Spokane. *See* ECF No. 67 at ¶ 191. The Defendant chose not to, and instead took two
6 lives and ruined countless others.

7 The Defendant has however accepted responsibility for both murders; the
8 Defendant pleaded guilty to both crimes. Should the Defendant fully serve both
9 sentences he will exit the custody of the Bureau of Prisons and the Washington State
10 Department of Corrections an old man, presumably physically incapable from
11 continuing to commit acts of violence and socially disconnected from the gang and
12 drug lifestyle that motivated his senseless behavior. The recommended sentence is
13 appropriate; a 600-month total sentence to hold the Defendant accountable for both
14 homicides. The Government accordingly requests that the Court accept the
15 Rule 11(c)(1)(C) plea agreement; the recommended sentence is sufficient to
16 accomplish the purposes outlined in 18 U.S.C. § 3553(a).

17 B. The need for the sentence imposed to reflect the seriousness of the offense,
18 promote respect for the law, and to provide just punishment

19 For the reasons discussed above, the Government asks that the Court sentence
20 the Defendant within the adjusted advisory guideline range, to 360 months
21 imprisonment. The sentence should be run consecutively to the Defendant’s earlier
22 240-month Washington State sentence following the second homicide. Such a
23 sentence reflects the seriousness of the Defendant’s criminal conduct. The
24 Government also asks that the Court order a five (5) year term of supervised release.

25 C. The need for the sentence imposed to afford adequate deterrence to criminal
26 conduct

27 As discussed above, a 600-month total sentence followed by a five-year term of
28 supervised release will deter future criminal activity by the Defendant. The

1 recommended sentence removes the Defendant from the community for a significant
2 period of time, likely much of the Defendant's remaining life.

3 D. The need for the sentence imposed to protect the public from further crimes
4 of the Defendant

5 As discussed above, a 600-month total sentence followed by a five-year term of
6 supervised release will protect the public from any future criminal activity by the
7 Defendant.

8 E. The need for the sentence imposed to provide the Defendant with needed
9 educational or vocational training, medical care, or other correctional
10 treatment in the most effective manner

11 A 600-month total sentence followed by a five-year term of supervised release
12 would provide the Defendant with opportunities to better himself so that – assuming
13 the Defendant is eventually released back into the community – he is no longer a
14 danger to others.

15 F. The kinds of sentences available

16 The Court may sentence the Defendant up to a life sentence, a fine of up to
17 \$250,000, and up to five years of supervised release.

18 G. The kind of sentence contemplated by the Sentencing Guidelines

19 The Sentencing Guidelines contemplate a term of imprisonment.

20 H. Any pertinent policy statements issued by the Sentencing Commission

21 There are no pertinent policy statements in this case.

22 I. The need to avoid unwarranted sentence disparity among defendants with
23 similar records who have been found guilty of similar conduct

24 A sentence within the guideline range would avoid unwarranted sentence
25 disparities.

26 J. The need to provide restitution to any victims of the offense

27 As noted in the Plea Agreement, W.G.O., and any representative of W.G.O. or
28 program that compensated W.G.O.'s family for expenses following his death, would

1 be entitled to restitution. *See* ECF No. 64 at 12–14. The Government has not yet
2 received any restitution information on behalf of W.G.O.; should the Government do
3 so prior to sentencing, the Government will file supplemental pleadings.

4 **IV. GOVERNMENT’S SENTENCING RECOMMENDATION**

5 As discussed above, the Government recommends that the Court impose a 360-
6 month sentence, consecutive to the Defendant’s 240-month Washington State
7 sentence, followed by a five (5) year term of supervised release with the conditions
8 outlined in the Presentence Investigation Report. *See* ECF No. 67 at 32–35. Such a
9 sentence is sufficient to accomplish the purposes outlined in 18 U.S.C. § 3553(a).

10 Dated: May 24, 2024.

11 Vanessa R. Waldref
12 United States Attorney

13 *s/Earl A. Hicks*
14 Earl A. Hicks
15 Assistant United States Attorney

16 *s/Michael J. Ellis*
17 Michael J. Ellis
18 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Lorinda Youngcourt; Paul Shelton

s/ Michael J. Ellis
Michael J. Ellis
Assistant United States Attorney